
**IN THE
SUPREME COURT OF MISSOURI**

No. SC86335

CITY OF ST. CHARLES, MISSOURI,

Respondent,

v.

STATE OF MISSOURI, et al.,

Appellants.

**Appeal from the Circuit Court of Cole County, Missouri
The Honorable Richard G. Callahan, Judge**

Respondent's Brief

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Other:

SB 11076, 7, 8, 9, 10, 14, 15, 16, 17, 18, 23, 25

www.stcharlescity.com/Government/city_charter.asp19

Jurisdictional Statement

The City of St. Charles challenged the constitutionality of SB 1107 on multiple grounds. After trial, the Circuit Court granted judgment in the City's favor on Count V of its petition, holding that SB1107 violated Article III, Section 23 's prohibition against multiple subjects, and dismissed each of the City's other counts. The State appeals from this judgment, and the City has not cross-appealed. Accordingly, the only issue on appeal is whether SB1107 violates Mo. Const. Article III, Section 23, and this Court has exclusive jurisdiction of this appeal. Mo. Const. Article V, Section 3; *National Solid Waste Management Association v. Director of the Department of Natural Resources*, 964 S. W .2d 818, 819 (Mo. banc 1998).

Statement of Facts

During 2002, the 91st General Assembly made numerous amendments to SB1107. Supplemental LF 1-52. On the last day of the 91st General Assembly, May 17, 2002, the House took up Senate Bill 1107. In a span of approximately one minute (*See* Second Supplemental LF 2, Stipulation #8) the House adopted another amendment specifically directed to the City of St. Charles which stated “...no new tax increment financing project shall be authorized in any area which is within an area designated as a flood plain by the Federal Emergency Management Agency...” Supplemental LF 6, Section 2.

Senate Bill 1107, as purportedly adopted, contains provisions repealing statutory sections in the following Chapters of the Revised Missouri Statutes:

Chapter 87 – Firemen’s Retirement and Relief Systems

Chapter 99 - Municipal Housing

Chapter 190 - Emergency Services

Chapter 321 – Fire Protection Districts

Supplemental LF 1-52.

The City of St. Charles, Missouri filed a five-count petition in the Circuit Court, seeking a declaration that Senate Bill 1107, passed by the 91st General

Assembly on May 17, 2002, violates the Missouri Constitution in various respects. The matter came before the Circuit Court for trial on February 4, 2004 and the Court entered its JUDGMENT AND ORDER on February 9, 2004. LF 196-199. The Circuit Court granted the City relief on Counts I and V. LF 196-203. In Count I, the City had alleged that the passage of Senate Bill 1107 after 6:00 p.m. violated Article III § 20(a). In Count V, the City had alleged that SB 1107 violated Mo. Const. Article III, § 23, in that it contained multiple subjects. LF 10-11.

The Defendants filed DEFENDANTS' MOTION FOR NEW TRIAL, OR IN THE ALTERNATIVE, TO AMEND ITS FINDINGS AND ENTER A NEW JUDGMENT on March 22, 2004. On May 11, 2004, the Court entered its JUDGMENT AND ORDER. LF 200-202. The Court amended its previous judgment by granting a "new trial pursuant to Supreme Court Rule 78.01 & 78.02". The second JUDGMENT AND ORDER did not state any grounds for a new trial.

The second trial on Count I was held on August 27, 2004. On that day the Court granted Defendants' oral motion for directed verdict as to Count I. LF 203.

Point Relied On

The Circuit Court correctly held that SB 1107's amendment of § 99.847, RSMo violated Mo. Const. Article III, Section 23, because the bill did contain multiple subjects, in that the amendments (including amending the TIF laws to prohibit TIF financing for developments in flood plains only within "...a county with a charter form of government..."; effectively the City of St. Charles) do not relate to the subject of the bill (as described in the title, "emergency services"); nor have a natural connection to that subject; and are not a means to accomplish the law's purpose.

Hammerschmidt v. Boone County, 877 S.W.2d 98 (Mo. banc 1994)

Homebuilders Association of Great St. Louis v. State of Missouri, 75 S.W.3d. 267 (Mo. banc 2002)

Stroh Brewery Co. v. State, 954 S.W.2d 323 (Mo. banc 1997)

Carmack v. Director, Mo. Dept. of Agr., 945 S.W.2d 956 (Mo. banc 1997)

Argument

The Circuit Court correctly held that SB 1107's amendment of § 99.847, RSMo violated Mo. Const. Article III, Section 23, because the bill did contain multiple subjects, in that the amendments (including amending the TIF laws prohibiting TIF financing for developments in flood plains only within "...a county with a charter form of government..."; effectively the City of St. Charles) do not relate to the subject of the bill (as described in the title, "emergency services"); nor have a natural connection to that subject; and are not a means to accomplish the law's purpose.

Standard of review

Subsequent to a trial on February 4, 2004, the Court granted a new trial [though it did not specify the ground(s) on which a new trial was granted in violation of Rule 84.05(c). “Every order allowing a new trial shall specify of record the ground or grounds on which said new trial is granted.” *See* Rule 78.03. A trial court’s failure to specify the specific grounds “...is presumed to be erroneous.” *Reynolds v. Briarwood Development Co.*, 662 S.W.2d 905, 906 [1] (Mo. App. E.D. 1983). *Also see* Rule 84.05(c)] and there followed a second trial on August 27, 2004. Therefore, this case was tried before the bench twice.

The standard of review for court tried cases has long been established:

In a court-tried case, this court will affirm the trial court’s judgment unless no substantial evidence supports it, it is against the weight of the evidence, or it erroneously declares or applies the law. *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976). This court reviews the evidence, along with all reasonable inferences, in the light most favorable to the trial court’s judgment and disregards all contrary evidence and inferences. *Wildflower Cmty.*

Ass'n, Inc. v. Rinderknecht, 25 S.W.3d 530, 534 (Mo. App. 2000)

As the trier of fact, the trial court determines the credibility of witnesses and is free to believe or disbelieve all or part of the witnesses' testimony. *Ken Cucchi Constr., Inc. v. O'Keefe*, 973 S.W.2d 520, 524 (Mo. App. 1998).

L.L. Lewis Const., L.L.C. v. Adrian, 142 S.W.3d 255, 259 (Mo. App. W.D. 2004).

The tests for an Article III, Section 23 (multiple subject) challenge

Appellants' Brief correctly states that, "With certain exceptions not relevant here, Article III, Section 23 requires that '[n]o bill shall contain more than one subject which shall be clearly expressed in its title[.]'" To guarantee compliance with this unwaivable, constitutional mandate, the Court has applied several tests, and a failure of any one of the tests would result in the determination of unconstitutionality.

One test articulated by this Court, en banc, states:

The test to determine if the title of a bill contains more than one subject is whether all provisions of the bill fairly relate to the same subject, have natural connection therewith or are incidents or means to accomplish its purpose.

Westin Crown Plaza Hotel Co. v. King 664 S.W.2d 2, 6[8] (Mo. banc 1984). In the Circuit Court's Judgment and Order it found the "TIF" Amendments had no relevance to the remaining provisions of the bill and failed to meet the standard for judicial review found in *Westin Crown Plaza Hotel Co. v. King*, 664 S.W.2d 2, 6[8] (Mo. banc 1984).

Another test is referenced in the Appellants' Brief which summarizes the test found in *Stroh Brewery Co. v. State*, 954 S.W.2d 323, 327 (Mo. banc 1997), "...whether the challenged sections were reasonably related to the purpose or subject of the bill as expressed in its title." (Appellants' Brief p. 13.) In that case, the Court also decreed:

We look first to the title of the bill to determine its subject. *Carmack*, 945 S.W.2d at 959; *Hammerschmidt*, 877 S.W.2d at 102.

Stroh Brewery Co. v. State, 954 S.W.2d 327 (Mo. banc 1997).

SB 1107 contained multiple subjects

Senate Bill 1107 violates Article III, Section 23 of the Missouri Constitution because of amendments unrelated to “emergency services” (*See* Supplemental LF 13, Section 19), including one of the bill’s provisions amending Section 99.847 by prohibiting the establishment of TIF districts in areas designated as flood plains in some, but not all counties with flood plains. Supplemental LF 6, Section 2.

CONSTITUTIONAL LANGUAGE

Article III, Section 23 of the Missouri Constitution states:

Section 23. Limitation of scope of bills – contents of titles –

exceptions. – No bill shall contain more than one subject which shall be clearly expressed in its title, except bills enacted under the third exception in section 37 of this article and general appropriation bills, which may embrace the various subjects and accounts for which moneys are appropriated. (Emphasis added.)

TITLE TEST FOR CONSTITUTIONAL COMPLIANCE

The first test for constitutional compliance is based on the title of the bill. “We look first to the title of the bill to determine its subject. *Stroh Brewery Co. v. State*, 954 S.W.2d 323, 327[10-13] (Mo. banc 1997).

The bill’s title says that it is, “An Act [t]o repeal certain sections... and to enact in lieu thereof forty-three new sections relating to emergency services, with

penalty provisions.” Supplemental LF 1. In the case of SB 1107, the term “emergency services” leaves no intimation to the public or the Legislature that the bill’s subject included a provision prohibiting the establishment of new TIF districts in flood plain areas in only certain counties. A TIF district is a district created for the purpose of providing a source of revenue for economic development purposes. The prohibition contained in SB 1107 applies to all future (but not expansion of existing) TIF districts in flood plain areas within the County like St. Charles, whether an emergency service is involved or not.

Nothing in the bill’s title would indicate that the amendments are the subject of the bill. Similarly, there is nothing in the use of the title phrase “emergency services” which would indicate that the bill contained a provision prohibiting TIFs.

In summary, the title is so amorphous that the title renders its subject uncertain. *Carmack v. Director, Mo. Dept. of Agr.*, 945 S.W.2d 956, 960[8] (Mo. banc 1997).

CONTENT TEST FOR CONSTITUTIONAL COMPLIANCE

When the title of the bill is amorphous, the Court may determine the subject from the contents of the bill itself. *Carmack v. Director, Mo. Dept. of Agr.*, 945 S.W.2d 956, 960[8] (Mo. banc 1997). As part of this examination, the Court

“...may examine the contents of the bill originally filed to determine its subject.” *Id.* at 960[8]. The contents of Bill 1107 include a clear definition of the Emergency Services that:

“Emergency services”, health care items and services furnished or required to screen and stabilize an emergency which may include, but shall not be limited to, health care services that are provided in a licensed hospital’s emergency facility by an appropriate provider or by an ambulance service or emergency medical response agency.

Supplemental LF 13, Section 19.

If the term “emergency services” as used in the title and the content of the bill was clear and precise, then the General Assembly would not need to define it.

Senate Bill 1107 contains more than one subject. It contains provisions relating to not only ambulances, defibrillators and stretcher vans, but also to

the establishment of Tax Increment Financing districts, membership of a fire protection district board and its treasurer, retirement allowances for firefighters and their surviving spouses, and a sales tax for certain fire districts. Supplemental LF

1-52. These subjects are not directly related to the defined “health care” and therefore the bill is unconstitutional.

HAMMERSCHMIDT TEST FOR CONSTITUTIONAL COMPLIANCE

The Missouri Supreme Court, in *Hammerschmidt v. Boone County*, 877 S.W. 2d 98 (Mo. banc 1994), stated that, “The test to determine if a bill contains more than one subject is whether all provisions of the bill fairly relate to the same subject, have a natural connection therewith or are incidents or means to accomplish its purpose.” *Id.* at 102.

Applying the *Hammerschmidt* guidelines to SB 1107, it becomes obvious that the bill contains more than one subject. For example:

- (a) Location of TIF districts. Section 99.847.2 of the bill (Supplemental LF 13) prohibits new TIF districts in flood plain areas in certain, but not all counties. This added section does not fairly relate to the subject of ambulances, defibrillators or stretcher vans, nor does it have a natural connection to the defined subject of “health care” as defined in the bill. Furthermore, the provisions of the bill prohibiting the establishment of TIF districts in flood plain areas are not necessary incidents nor do they provide a means to accomplish the purposes of “health care”.
- (b) Retirement allowances. Sections 87.177, 87.207, 87.231, 87.235, and

87.238 of the bill (Supplemental LF 1-5) pertain to the retirement allowances for firefighters and their surviving spouses. Those amendments do not fairly relate to the subject of ambulances, defibrillators, or stretcher vans, nor do they have a natural connection to the defined subject of “health care”. Furthermore, those provisions are not necessary incidents of, and they do not provide a means to accomplish, the health care purposes of the bill.

It should be pointed out that the Missouri Supreme Court has allowed a bill to contain matters beyond the single purpose, but did so only when those additional provisions merely restated existing language and did not make any changes to the second subject. *Westin Crown Plaza Hotel Co. v. King*, 664 S.W.2d 2, 6 (Mo. banc 1984). In our case, however, SB 1107 specifically changes the language of Section 99.847, which contains the second subject. Since SB 1107 specifically amended the section pertaining to the second subject, it violates the constitutional provision prohibiting two subjects in a single bill.

APPELLANTS’ BRIEF DISTINGUISHED

The arguments in Appellants’ brief are factually incorrect and contrary to the law defined in *Hammerschmidt*. The Appellants attempt to justify the inclusion of multiple subjects by defining “emergency services” in the title differently than the

bill itself defines the title. By doing so, Appellants then argue that there is a natural connection between ambulance districts (which provide health care services) and fire districts (which do not provide health care services) and that TIF districts may impact these districts.

The Appellants then argue that emergency services (as defined by Appellants) need funding and the TIF prohibition guards against underfunded emergency services. This argument falls short because:

- (a) The House could not have considered such options in the span of one Minute that it adopted the TIF amendments. Second Supplemental LF 2-3, Stipulation 8.
- (b) The argument assumes that emergency services (such as an independent fire district or independent ambulance district) would suffer financially if the City of St. Charles adopted a TIF. This argument assumes facts not in the record and overlooks the fact:
 - (i) that the City of St. Charles operates its own fire department and ambulance department www.stcharlescity.com, and
 - (ii) that “any district providing emergency services...shall be entitled to reimbursement from the special allocation fund.” Supplemental LF 5, Section 99.847.1.

- (iii) Section 99.820(12) specifically allows a City to pass all or a portion of the increased taxes (increment) to the taxing authority. For example, a City may annually pass 50% of the tax increases generated by the TIF development. So the Appellants' arguments assume damage and injury to the emergency services districts, when they may in fact receive additional money from the creation of the TIF.
- (c) The argument incorrectly states the TIF prohibition occurs "...only in precisely those counties whose emergency services districts are prohibited...from imposing new sales taxes" (Appellants' Brief p. 17) when in fact they are far from identical, as the following chart shows.

Counties whose emergency services districts are prohibited...from imposing new sales taxes (Supplemental LF 46, Section 321.552.1)	Counties prohibited from new TIF projects (Supplemental LF 6, Section 2) but allowed to expand existing TIF projects (Supplemental LF 6 Section 3)
Any county of the first classification with over two hundred thousand inhabitants	N/A
Any county of the first classification	

<p>without a charter form of government</p> <p>and with more than seventy-three thousand seven hundred but less than seventy-three thousand seven hundred but less than seventy-three thousand eight hundred inhabitants</p> <p>Any county of the first classification without a charter form of government and with more than one hundred eighty-four thousand but less than one hundred eighty-eight thousand inhabitants</p> <p>Any county with a charter form of government with over one million inhabitants</p> <p>Any county with a charter form of</p>	<p>N/A</p> <p>N/A</p> <p>N/A</p> <p>Any County with a charter form of</p>
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government with over two hundred eighty thousand inhabitants but less than three hundred thousand inhabitants (emphasis added)	government with greater than two hundred fifty thousand inhabitants but fewer than three hundred thousand inhabitants (emphasis added)
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Clearly, the correlation argued by Appellants does not exist. The argument that emergency services would suffer financially also begs the question that if this was a concern, why does the bill allow the expansion of TIFs within flood plains? Supplemental LF 6, Section 3.

- (d) The argument ignores the fact that a TIF increases funding for such fire districts and ambulance districts. If a property generating \$1,000 in tax revenues will generate \$10,000 in tax revenues after a TIF, Section 99.820(12) RSMo allows the City to pass all or a portion of the increase to the districts.
- (e) The argument that “...the prohibition on TIF financing is limited to flood plains...” (Appellants’ Brief p. 18) clearly misstates the obvious. TIF financing is allowed to be expanded in flood plains (Supplemental LF 6,

Section 3) and new TIF financing is allowed in flood plains of non-charter counties (Supplemental LF 6, Section 2).

- (f) The argument engages in the same broad speculation prohibited by this Court's decision in *Hammerschmidt v. Boone County*, 877 S.W. 2d 98 (Mo. banc 1994). Even if this Court concludes that the subject of the remainder of the bill is "emergency services" as defined by Appellants, the purpose of the addition of the TIF provisions is to prohibit TIFs in certain areas, which is a different subject. To read the term "one subject" so broadly that it makes "emergency services" and "tax increment financing" a single subject would make the term "one subject" meaningless. The *Hammerschmidt* case supports the trial court's conclusion that the bill contained multiple subjects.

In summary, the amendments have no bearing on, relevance to, or connection with the remaining provisions of Senate Bill 1107 and create multiple subjects in violation of Article III, Section 23. See *Homebuilders Association of Great St. Louis v. State of Missouri*, 75 S.W.3d. 267 (Mo. banc 2002).

Conclusion

SB 1107 started simply enough. Emergency services were defined as “health care items”. However, SB 1107 underwent numerous amendments (Second Supplemental LF, Stipulation 6) which were not related to health care. The final version of SB 1107 contained more than one subject which was not clearly expressed in its title. The Circuit Court correctly held SB 1107 to be unconstitutional.

Respectfully submitted,

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**Certification of Service and of Compliance with
Rule 84.06 (b) and (c)**

The undersigned hereby certifies that on this ____day of January, 2005, a true and correct copy of the foregoing brief, and one disk containing the foregoing brief, were mailed, postage prepaid, to:

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The undersigned further certifies that the foregoing brief complies with the limitations contained in Rule No. 84.06(b), and that the brief contains 3389 words.

The undersigned further certifies that the labeled disk, simultaneously filed with the hard copies of the brief, has been scanned for viruses and is virus-free.

Stephen A. Martin